

JESSE S. FINLAYSON, SBN 179443
MICHAEL R. WILLIAMS, SBN 196863
FINLAYSON, AUGUSTINI & WILLIAMS LLP
110 Newport Center Drive, Suite 100
Newport Beach, California 92660
Telephone: (949) 759-3810
Facsimile: (949) 759-3812
Email: jfinlayson@faw-law.com; mwilliams@faw-law.com

Attorneys for Defendant and Counterclaimant
CASHCALL, INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TRICIA LECKLER, ON BEHALF OF
HERSELF AND ALL OTHERS SIMILARLY
SITUATED,

Plaintiffs,

v.

CASHCALL, INC.,

Defendant.

CASE NO. C 07-04002 SI

**JOINT APPLICATION FOR 30-DAY
EXTENSION OF DEADLINE FOR
PARTIES TO FILE CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

AND RELATED COUNTERCLAIMS.

1 TO THE HONORABLE SUSAN ILLSTON, UNITED STATES DISTRICT JUDGE:

2 Plaintiff Tricia Leckler and Defendant CashCall, Inc. jointly apply for a 30-day extension of
3 the Court-ordered January 24, 2008 deadline for the parties to file cross-motions for summary
4 judgment. As explained below, good cause exists to grant the requested 30-day extension.

5 **I. Background.**

6 In December 2005, Plaintiff borrowed money from Defendant pursuant to a promissory note.
7 In August 2007, Plaintiff filed a complaint against Defendant, alleging that Defendant violated the
8 Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"), by placing telephone calls to
9 Plaintiff's cellular telephone using an artificial or prerecorded voice during collection activities
10 related to Plaintiff's account. Plaintiff brings this action on behalf of herself and all others similarly
11 situated.

12 Under the TCPA, it is "unlawful for any person . . . to make any call (other than a call . . .
13 made with the prior express consent of the called party) using . . . an artificial or prerecorded voice . .
14 . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile
15 radio service, or other radio common carrier service, or any service for which the called party is
16 charged for the call." 47 U.S.C. § 227(b)(1)(A)(iii). The phrase "prior express consent" is not
17 defined in the TCPA, and the parties have not been able to find any reported decisions that have
18 addressed the meaning of the phrase.

19 Not surprisingly, Plaintiff and Defendant disagree as to what constitutes "prior express
20 consent" for purposes of the statute. CashCall contends that it had Plaintiff's prior express consent to
21 make calls to her cellular telephone number because Plaintiff provided her cellular telephone number
22 to CashCall when she applied for her CashCall loan and on several other occasions (in writing).
23 Plaintiff contends that she did not provide prior express consent to receive prerecorded message calls
24 from CashCall to her cellular telephone number. As the parties' counsel informed the Court during
25 the status conference in this case, the parties anticipated filing cross-motions for summary judgment
26 in an effort to obtain a ruling on the issue of prior express consent. On December 28, 2007, the
27 parties submitted a stipulation requesting an extension of the ADR completion deadline pending a
28 ruling on the parties' anticipated cross-motions. On January 8, 2008, the Court entered an order

1 granting the parties' stipulation and directing the parties to file their cross-motions by January 24,
2 2008.

3 **II. Request For 30-Day Extension Of Time.**

4 On December 28, 2007, the Federal Communications Commission issued a Declaratory
5 Ruling with respect to the phrase "prior express consent," as used in the TCPA, clarifying that
6 "autodialed and prerecorded message calls to wireless numbers that are provided by the called party
7 to a creditor in connection with an existing debt are permissible as calls made with the 'prior express
8 consent' of the called party." The FCC released its ruling on January 4, 2008.

9 In light of the FCC's ruling, Plaintiff is assessing her options, and the parties are in
10 discussions regarding how to proceed with this case but need a couple weeks to make any definitive
11 decisions. An extension of the January 24 cross-motion filing deadline to allow these discussions to
12 continue – and to possibly avoid cross-motions altogether – will help minimize the time and expense
13 for the parties and their counsel and will also conserve the Court's time and resources. Thus, the
14 parties believe that good cause exists to extend the January 24, 2008 cross-motion filing deadline for
15 30 days to February 25, 2008 (the first business that is 30 days after January 24) and request that the
16 Court grant their Joint Application.

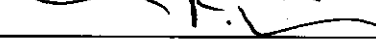
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1 **III. Conclusion.**

2 For the reasons set forth above, the parties request that the Court grant their Joint Application
3 for a 30-day extension of the January 24, 2008 cross-motion filing deadline.

4 DATED: January 23, 2008

JESSE S. FINLAYSON
MICHAEL R. WILLIAMS
FINLAYSON, AUGUSTINI & WILLIAMS LLP

7 By: 
Michael R. Williams

8
9 Attorneys for Defendant and Counterclaimant
CASHCALL, INC.

10 DATED: January __, 2008

11 DOUGLAS J. CAMPION
12 LAW OFFICES OF DOUGLAS J. CAMPION

13 JOSHUA B. SWIGART
14 HYDE & SWIGART

15 By: _____
Joshua B. Swigart

16 Attorneys for Plaintiff and Counterdefendant
17 TRICIA LECKLER

18 Leckler - Statement Regarding Dispositive Motions
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4 DATED: January __, 2008

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6 MICHAEL R. WILLIAMS
7 FINLAYSON, AUGUSTINI & WILLIAMS LLP

8 By: _____
9 Michael R. Williams

10 Attorneys for Defendant and Counterclaimant
11 CASHCALL, INC.

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17 By: _____
18 Joshua B. Swigart

19 Attorneys for Plaintiff and Counterdefendant
20 TRICIA LECKLER

21 Leckler - Statement Regarding Dispositive Motions
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CERTIFICATE OF SERVICE

I, Wendy S. Mills, declare as follows:

I am employed in the County of Orange, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 110 Newport Center Drive, Suite 100, Newport Beach, California 92660, in said County and State. On January 23, 2008, I served the following document(s):

**JOINT APPLICATION FOR 30-DAY EXTENSION OF DEADLINE FOR PARTIES TO
FILE CROSS-MOTIONS FOR SUMMARY JUDGMENT**

on the parties stated below:

Counsel for Plaintiff:

**Joshua B. Swigart, Esq.
HYDE & SWIGART
411 Camino Del Rio South, Suite 301
San Diego, CA 92108-3551**

Counsel for Plaintiff:

**Douglas J. Campion, Esq.
LAW OFFICES OF DOUGLAS J. CAMPION
411 Camino Del Rio South, Suite 301
San Diego, CA 92108**

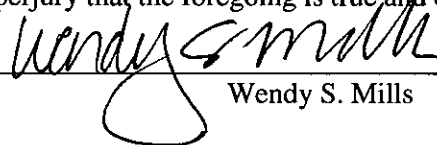
by the following means of service:

- ☒ **BY MAIL:** I placed a true copy of the above-mentioned document(s) in a sealed envelope addressed as indicated above, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.
- ☐ **BY PERSONAL SERVICE:** I provided a true copy of the above-mentioned document(s) to a messenger for personal delivery to each person named above, at the address(es) shown above, before 5:00 p.m. on the above-mentioned date.
- ☐ **BY ELECTRONIC MAIL:** I caused the above-mentioned document(s) to be transmitted electronically to the e-mail address of the addressees indicated above. I am readily familiar with this firm's Microsoft Outlook electronic mail system and each such document was duly served electronically on the above-mentioned date, and the transmission was reported as complete and without error.
- ☐ **BY FACSIMILE:** I caused the above-mentioned document(s) to be transmitted by facsimile machine to the parties and numbers indicated above, on the above-mentioned date, pursuant to Rule 2.306. The facsimile machine I used complied with Rule 2.306 and no error was reported by the machine. Pursuant to Rule 2.306, I caused the machine to print a transmission record of the transmission, a copy of which is maintained by this office.
- ☐ **BY UPS—NEXT DAY AIR:** I placed a true copy of the above-mentioned document(s) in a sealed envelope or package designated by the United Parcel Service with delivery fees paid or provided for, addressed to the person(s) as indicated above, on the above-mentioned date, and I deposited same in a box or other facility regularly maintained by United Parcel Service or delivered same to an authorized courier or driver authorized by United Parcel Service to receive documents.

I am employed in the office of Michael R. Williams, a member of the bar of this Court, and the foregoing document(s) was/were printed on recycled paper.

- ☒ **(FEDERAL)** I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 23, 2008.


Wendy S. Mills

JESSE S. FINLAYSON, SBN 179443
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CASE NO. C 07-04002 SI

**[PROPOSED] ORDER GRANTING JOINT
APPLICATION FOR 30-DAY EXTENSION
OF DEADLINE FOR PARTIES TO FILE
CROSS-MOTIONS FOR SUMMARY
JUDGMENT**

1 Plaintiff Tricia Leckler and Defendant CashCall, Inc. jointly applied for a 30-day extension of
2 the Court-ordered January 24, 2008 deadline for the parties to file cross-motions for summary
3 judgment in this action. The Court having read and considered the parties' Joint Application
4 concludes that the parties have established good cause to grant the requested 30-day extension.
5 Accordingly, the Court grants the parties' Joint Application. The parties shall file their cross-motions
6 for summary judgment by February 25, 2008.

7 IT IS SO ORDERED.

8 DATED: _____, 2007



Susan Illston
United States District Judge

11 [Leckler - Proposed Order Granting Request for Extension of Time](#)